

**BOARD OF ADJUSTMENT MEETING MINUTES
CITY OF MINNEAPOLIS
ROOM 317 CITY HALL
September 25, 2002**

Minneapolis Board of Adjustment:

Ms. Debra Bloom
Mr. David Fields
Mr. John Finlayson
Mr. Paul Gates
Ms. Marissa Lasky
Mr. Barry Morgan
Mr. Peter Rand
Ms. Gail Von Bargaen
Mr. Richard White

The Board of Adjustment of the City of Minneapolis met at **2:00 p.m.**, on **Wednesday, September 25, 2002**, in **Room 317 City Hall**, Minneapolis, Minnesota, to consider requests for the following:

2:00 p.m.

1. 1065 25th Ave. SE. (BZZ-749, 1st Ward)

Mark Christopherson on behalf of Jim Eischens has appealed the decision of the Zoning Administrator regarding a notice of violation that a home business operating at the subject property does not comply with the home occupation standards.

Planning Department Recommendation by Ms. Watson:

Staff is recommending **denial** of the appeal of the Zoning Administrator.

Motion: Peter Rand motioned to **deny** the application. Gail Von Bargaen 2nd the motion.

Action:

The Board of Adjustment adopted the findings and **denied** the appeal of the Zoning Administrator.

Vote to deny:

Yeas: Bloom, Finlayson, Rand, Von Bargaen

Nays: Fields, Gates, Lasky

Abstain: White

Absent: Morgan

Applicant:

Mark Christopherson, attorney for Jim Eischens. I have additional evidence and the document is in your packets. In your packets the information is repetitive and repeated and we see it as an attempt to create a voluminous problematic history of activity at 1065

and that is not the case. The notes in your packets dating back to 1999 the inspectors were told by tenants that Eichens lived there, there is a reference to a cote that is used to sleep on and actually it is a bed. The notes are incorrect. The outside vehicle storage issue is not a long-standing issue at the site. There is also reference 1057 57th Av. running a business by Mr. Eichens and again he does not own it and he was not noticed for that property and 1054 again same suggestion. Mr. Eichens did not receive notice for either of those property's and all vehicles are not registered to Mr. Eichens but some are registered to his brother who also owns property in the area and we have made several attempts to straighten this out according to the zoning ordinances, this same mistake has been made more than once. There is a memorandum from Council Member Paul Ostrow noting that several individuals related to Mr. Eichens show 1065 as a their residential rental license contact address and we are beside ourselves on that and it apparently an attempt to again try to try to say he does not live there, this may be in reference he manages property for those same individuals or did 1999 and they list him as their managing agent rental license contact and there is nothing controversial about that yet it is included. Most of these complaints are from one neighbor, Judy Fox who has addressed this board. She has several complaints about other properties in the immediate area. There is also a complaint from a Mr. Tim Lutz regarding the parking of a vehicle on Mr. Eichens property blocking Mr. Lutz but actually Mr. Lutz could not legally cross over Mr. Eichens property without an easement to access his own property. Since then Mr. Lutz has moved out and the new owner has signed his support of Mr. Eichens application. The paper history of this property makes it look more impressive than it is and it is repetitive and irrelevant. The only known document from Hilary Watson included in your packet is from Jan Jansen noting problems and now says solutions have been followed up on and problems have now been solved. The alley is now open. We have letters of support and the activity at this address is no more overwhelming than any other home on the block. We have not been unresponsive to problems. We have secured a commercial lot and another letter informs you Mr. Eichens has told his lessors to mail their checks to reduce traffic, to ensure the character of the neighborhood is not harmed. We ask for a remand this issue of the vehicles with specific direction that staff will have to follow the Minneapolis Zoning Code Ordinance. This neighborhood is a high rental property neighborhood and Mr. Eichens is a responsible landlord. We should not be made to uproot the business over the issue of vehicles. In closing I would like to state we will respond to any remaining issues as soon as the inspector can come out to meet us on site object to any repetitive testimony as a matter of record.

Oppose:

Robb Clarksen Inspector of the City of Minneapolis and states he would like to respond to the comments of not responding to attempts by the applicant the representative of the applicant and states it is true the Zoning office has been contacted for meetings requests and we have sat down with the applicant and his representative to discuss the issues and try to find a resolution to the problem but further states "I am not definite the applicant and his representative have come to a resolution". I did try to identify a some ways the business could be less impacting on their neighborhood and one of the things that Mr. Eichens brought up in that meeting was he would like to have another meeting where I would come out the his site and take a look but that would be a waste of my (Mr. Eischen's) time and after discussion with my supervisor we decided that if I went out the

lot it would be cleaned up and a neater picture would be seen and it seemed likely that would happen and for the record with direction I did not go out to Mr. Eischens site nor did I telephone to inform I was not coming. The scope of Mr. Eischens business as a result of a search shows 82 properties, all name spelling may vary a bit and one of the problems we have had is we have gotten new material as this has gone on. One new item is a rental business complaint of the Housing Office that did not reach the Zoning Office and the complaint is an illegal use of a dwelling and accessory building as an operations and storage center for rental and repair business dated 1998 for 1065. More information shows a rental license was pulled and paid on October 15, 2001 and that is a rental license that is still good. Pictures of vehicles on the site show a red van used for repair of properties. I was a tenant of Mr. Eischens properties and one thing I want to bring up on a Saturday afternoon back in August, Mr. Eischens visited my apartment with his brother and they proceeded to fix my sink and shower which counter acts statements made by Mr. Eischens and his attorney that Mr. Eischens brother is not part of Mr. Eischens business. *In response to Mr. Paul Gates question, the Minneapolis Housing Inspectors bring alot of issues to our attention. There are far more letters sent from Housing Inspectors informing an occupant they are to weed or cut their grass other various types of things and if there is an issue such as that a business being run at a home site, Housing Inspectors come to us and inform our department. There are fewer letters sent out from the Zoning Office regarding site problems. Zoning Inspections have been at this site for this issue and there is documentation and correspondence of a rental office being operated there.

Oppose:

Judy Fox resident at 1069 25th Avenue SE, right next door to 1065, spoke in opposition and states privacy and security are her main issues and wants to point out there is quite a bit of traffic coming to 1065, both on foot and car. I want to also point out the hours of this business seem to be unlimited and people come and go day and night all hours of the week and weekend and that makes me uncomfortable. There are envelopes taped to the exterior of the doors so people can come and pick up the envelopes at any time and there is a mail slot where drop off is allowed and I am uncomfortable with that. I would be much more comfortable with a sign that stated "Closed" with hours of operation. The number of employees does exceed what has been stated. In addition to Mr. Eischens as office manager and two brothers there is a woman that works for them and fleet of people who work in the summer and clearly if you count the number of properties your going to have alot of people working to maintain those properties. The single-family homes in my neighborhood have been converted to two family homes and it takes alot of people to take care of them. Some of the vehicles spoken about at the last meeting have disappeared in the last two weeks. I want to know how long those vehicles will be gone and if and how that will be enforced. This office serves as a dispatch center and I understand that is prohibited. People come in the morning and get assignments and then go out and come back at the end of the evening. The video taped shown in the back yard was short lived but the point was to let it be known how the back yard at 1065 is used. There was a tent set up and picnic table for the staff. The noise and traffic generated from that was too much. The use of the garage for storage is resulting in alot of traffic and blockage of the alley due to loading up stuff. Being the block leader I have brought to the attention of the City some problems with other properties in the neighborhood and

with Mr. Eischens properties and I do not see that as a bad thing. I do believe Mr. Eischens lives at the property, but he did back in 1977 and shortly after that moved out and began renting it. I don't see him carrying groceries or entertaining people at the site, in five years I have seen him with one child, one time and you think he would be seen entertaining his child at the site. I have complained about this property for four years and now I am here and I ask for help with this matter.

Oppose:

Lori Jo Lampreck resides at 1073 25th Ave. SE spoke in opposition and states she has lived at 1073 25th Ave. SE for 11 years and supports all the opposing statements made by Judy Fox. I commend her for bringing this up to the front and taking care of our neighborhood. I do want to say the volume of traffic is not exaggerated and in regards to Tim Lutz's property, it is still owned by Mr. Lutz and I am not sure where the council has gotten there information and with each complaint that was made I did not make complaints and that is why I am coming forward now and let you know there is someone else who notices these things happening. I see Mr. Eischens brother more than I see him and he does come move his vehicle so I can come and park and I do see him moving material in and out of the garage. I also want to state that I do not agree with the expression "responsible landlord", I know personally people who live in the area who have complaints regarding the same issues and after this having gone on so long I do not see that as being responsible.

Board of Adjustment Member Richard White

Excuses himself from vote and discussion on this item.

Board of Adjustment Member Paul Gates

Asked Robb Clarksen the question what is the official history of notices to Mr. Eischens that he is in violation of various aspects of the Minneapolis Zoning Ordinances. I see the record of evidence piling up but am unclear whom sent letters and what is the terms of official communication between the city and Mr. Eischens. I will say my sympathy is with those who are complaining about this and that this has gone on for too long and I hope the outcome of today's hearing is an improvement for this neighborhood. I am concerned about the fashion of how this was handled, the inspector who has been assigned to this case lives in the property of the appellant and I don't think that is the fault of the inspector but of those who assigned him and I don't know if there is a conflict of interest there and that taints the city's prosecuting this case and today we are finding the inspector to be the primary spoke persons for the city on this case and to me this does not help the city's cause any. I am also concerned while the allegations have gone on for this long, apparently the official notice went out June of this year and that has in fact led to this hearing so this in effect the first strike against the appellant that there isn't any kind of official record of violation or notice to remedy the situations. I don't see the record saying this is the third strike and then the issue of the nine citations listed the first two have to do the with type of business run out the home an the other seven deal with issues that are curable. We are all agreeing that is it difficult to prove if the appellant lives there and which brings me to the citation that the home occupation shall be an activity which is associated with the use of a dwelling and I believe we have examples this type of business is being run successfully out of homes. Which then leaves me with the items that are curable. We should set come conditions with some time and go from there.

Board of Adjustment Member John Finlayson

There is a complaint letter sent out by the Zoning Administrator on June 18, 2002, which states there is a violation of a home business being operated at subject property that does not comply with the home occupation standards. If this is a business then I think it should be done out a business I see it is done out of a home only because it is cheaper. The home can be used as a business and plus get income out of it to and it inflicts a great deal of suffering on the neighborhood, this is a residential neighborhood and they don't need this form of abuse. I view this behavior as strike four.

Board of Adjustment Member Marissa Lasky

It is my understanding when a home is in violation of the home business occupation they have the opportunity to cure the problems. That they do not automatically lose the right to operate a home based business and also it is a decision of the Board and the history of the business whether it is so profound that we will not let the applicant have the opportunity. My standpoint is there should be an opportunity to cure, specifically to address the items the neighborhood brought up and inspections are brought up in a specific fashion. I am currently on a block where there are four (4) home based business including a building contractor with vehicles larger than a Honda, but the home are meticulously maintained and the business's are well run and there is not alot traffic. I have been doing this for twenty (20) years. It is only a problem when the neighborhood is not happy with it. There should be some period to cure all of this and be done with it. It cures to specific to criteria or it does not, I do not want to be responsible for denying people the ability to have a home based business without the ability to rectify their complaint, I see an opportunity is needed. We can deny the use of this property and then it becomes a rental property and then new neighbors may come you may not love. I don't think we should deny but set guidelines with deadlines or your done.

Board of Adjustment Member Gail Von Barga

Pointing to the individual records it does say some actions were taken but I am not clear on who has taken the actions. It does state the applicant has been talked to and given the opportunity to take care of issues without action on the applicant's part. We also know orders have gone out showing some specific things have already been done. We see there has been some time put into this and notice has been given to the applicant. I take less issue with the question of whether he lives on site or not, and it can be proven one way or the other. I noticed that Mr. Eischens on a copy of the tax record he used half of his property tax as a deductible on his schedule E which tells me that he claimed half of this property as rental. I do not know if this is true. I am somewhat in favor of giving time to see if he can run a clean home based business. It does not sound like it has been in the past. The fact that it took until two weeks ago to get vehicles of his site and to make other arrangements and the fact he set up shop on the front lawn indicates disregard for the seriousness of the nature and the warnings and so I feel less lenient. I feel it is more appropriate to conduct business for this number out of a commercial space other than a home.

Board of Adjustment Member David Fields

I proceed this issue as two folds under the definition of whether it is meeting standards of the home business. The first one is if Mr. Eischens did not live there on site at all and that was prove-able we would not be discussing this issue because he would not be in conformance with operating a home business. There is still ambiguity of material dating

back to October of 1999 three years ago and my impression from the last meeting is that is within the last year Mr. Eischens established residence at 1065, this goes back three years and there is indication for three years Mr. Eischens attempted to keep homesteading 1065, but then I note with some disgust that a property can be homesteaded only if a person lives there in December or sleeps there a couple of times in December of the year for tax purposes, a nice tax maneuver. So to prove that he lives there is not is almost impossible, it all anecdotal and I do not know what we can do about that. The other issue is lets assume he lives there and then back to what Ms. Lasky speaks about and is there a violation? There is a voluminous history of alot of problems and if you look at the standards of operating a home based business as it is outlined. There are plenty of complaints and that is remedial and I do agree that real efforts are made to remediate any problems. I see that it is up to the Board of Adjustment to set each of those out. I am giving up on the issue if Mr. Eischens lives on site or not.

Board of Adjustment Member Debra Bloom

My concern on this is Mr. Eischens has had three (3) years, three months, something was finally done in the last two weeks how long is that going to be in place? I understand how difficult it is for the city to go out to the site weekly, monthly what ever the case may be and if it is regular time the trucks can always be moved. I am concerned about that from the standpoint of this has been three years. The first violation is from 1998. It has been a reoccurring problem.